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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Streamlining the Commission's)
Antenna Structure Clearance)
Procedure and Revision of Part 17)
of the Commission's Rules)
Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

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To: The Commission

REPLY COMMENTS
OF
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Metropolitan Water District of Southern California
("Metropolitan"), by its attorneys and pursuant to
Section 1.415 of the Rules and Regulations of the Federal
Communications Commission ("FCC" or "Commission"), submits
these Reply Comments in response to the various comments
submitted in response to the Notice of Proposed Rule Making
("NPRM") in the above-captioned proceeding.

STATEMENT OF INTEREST

1. Metropolitan transports over two and a half
billion gallons of water a day and ranks as one of the
world's largest water agencies. Geographically, its
operations range from urban downtown Los Angeles to
extremely rural desert areas around Death Valley.
Metropolitan relies heavily on VHF and UHF land mobile

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communications systems to safely, efficiently and reliably provide Southern California with water. To support its internal communications among maintenance and repair crews throughout rural and urban Southern California, Metropolitan also relies on critical private operational-fixed microwave service licensed under Part 94.

2. In connection with its land mobile and microwave radio operations, Metropolitan is the owner of tower structures, and licensee of radio transmission facilities located on such towers, throughout Southern California. As such, Metropolitan will be affected by the FCC's proposed rule changes regarding the relative obligations of tower owners and licensees with respect to antenna structure clearance, construction, marking and lighting. Metropolitan appreciates this opportunity to respond to the Comments submitted in this proceeding.

II. COMMENTS

3. Metropolitan commends the Commission on its efforts to simplify the antenna structure clearance process and more equitably allocate responsibility for violations of its tower painting and lighting requirements. Metropolitan strongly supports the Commission's proposal to

require tower owners rather than licensees to provide the Commission with antenna structure information and to impose primary responsibility on tower owners for violation of FCC tower painting and lighting requirements. However, in order to best achieve the streamlining and equitable allocation of responsibility envisioned by the Commission, Metropolitan recommends that the Commission's proposal be modified in several respects. The proposed modifications are discussed below.

A. The Proposed Tower Registration Process Can and Should Be Further Streamlined by Requiring a Single Registration Form, Eliminating the Renewal Requirement, and Requiring Registration Only Upon Construction of a New Antenna Structure or Modification of an Existing Structure

4. Metropolitan supports the Commission's goal of establishing a simplified, unified antenna structure registration process and database. However, the proposed rules still place unnecessary burdens on tower owners and licensees. Metropolitan agrees with the recommendation put forth by commenters that the Commission either eliminate the use of FCC Form 854 or consolidate the Form 854 and FAA Form 7460-1 into a single form. See, e.g., Comments of UTC at p. 5; Comments of GTE Service Corporation ("GTE") at pp. 3-6. The information requested by the Form 854 largely duplicates

that already required by the FAA Form 7460-1. In addition, the requirement that an applicant obtain an FCC Antenna Structure Registration Number before construction or alteration of the antenna structure may begin imposes an unnecessary delay on antenna structure owners. Use of a single form, be it the FAA Form 7460-1 or a consolidated form^{1/}, will not only simplify the application and registration process by reducing the amount of paperwork involved, it will enable antenna structure construction and modifications to commence as soon as FAA approval is obtained, thereby eliminating the need to wait until first obtaining routine FCC acknowledgement of registration in the form of the 854R.

5. The paperwork burden on both the Commission and the public can also be reduced by eliminating the proposed renewal requirement for antenna structure registrations. Under the FCC's proposal, structure owners would already be under a continuing obligation to notify the Commission of changes in location, height, ownership, painting or lighting

^{1/} In the event the proposed FCC Form 854 is used, Metropolitan agrees with AT&T's suggestion that the form not include the request for information pertaining to the construction date of the registered antenna structure. Comments of AT&T Corporation ("AT&T") at pp. 12-13. In many instances, this requirement will place an unnecessary burden on owners of old antenna structures. Obtaining such information may require extensive historical research.

of the structure. Metropolitan agrees with AT&T that an additional renewal requirement would be superfluous. See AT&T Comments at p. 12. Should the Commission nonetheless choose to require the filing of renewals, Metropolitan agrees with UTC that such filings should be required no more frequently than every ten years. See UTC Comments at p. 9.

6. The burden on structure owners can further be reduced by requiring registration only in connection with the proposed construction or modification of an antenna structure. See UTC Comments at p. 6. Requiring registration prior to such events serves no useful purpose and adds unnecessarily to the paperwork burden of both the registrant and the Commission. Accordingly, Metropolitan suggests that registration not be required until an applicant proposes to construct or modify a tower, or upon renewal should the Commission adopt a renewal requirement.

C. The FCC Should Incorporate FAA Painting and Lighting Standards Into Its Rules

7. Metropolitan agrees with the commenters who support the FCC's proposal to replace its tower marking and lighting specifications with a general reference to the applicable standards of the FAA. The FCC generally relies

on the FAA's recommendations when specifying painting and lighting requirements. Complying with such requirements will be simplified by the incorporation of FAA standards into the Commission's rules.

D. The Commission Should Not Impose Registration Fees

8. Registrants should not be assessed fees for registration and/or renewal. Metropolitan agrees with the Personal Communications Industry Association ("PCIA") and others that there is no justification for the imposition of such fees. See, e.g., Comments of PCIA at p. 6. Registrants receive no direct benefit from registration. Moreover, since no Commission action is required in response to registration filings, the cost of administering the registration process should be insignificant.

E. The Commission Should Permit Registrants to Correct Previously Filed Data Without Penalty

9. Metropolitan supports the suggestion made by several commenters that the FCC should not penalize registrants for submitting corrected antenna structure data as part of the registration process. See, e.g., Comments of AT&T at p. 14; Comments of the Cellular Telecommunications

Industry Association ("CTIA") at pp. 6-7. One of the major goals of this proceeding is the establishment of a comprehensive and accurate antenna structure database. Such a database is necessary in large part due to the inconsistent information pertaining to individual antenna structures currently on file with the Commission. To penalize registrants for their role in ensuring the accuracy of the database is not only inequitable, but will provide a strong disincentive to reporting such inaccuracies, thereby defeating one of the primary goals of registration.

F. Licensees Should Not Be Held Secondarily Liable Absent Notice, Opportunity, and the Legal Ability to Cure Painting and Lighting Violations

10. All of the commenters addressing the issue agreed with the Commission's proposal to impose primary responsibility for painting, lighting and maintaining antenna structures on the owner of the structure. Metropolitan agrees with these commenters, and strongly supports the imposition of primary responsibility on the party owning and controlling the antenna structure. However, like the majority of these commenters, Metropolitan opposes the Commission's proposed imposition of secondary liability on licensees for violation of the FCC's antenna structure painting and lighting requirements.

11. As noted by several commenters, a licensee leasing space on an antenna structure generally has no legal ability to access or maintain the structure, and should thus not be held responsible for violations which it is unauthorized to cure. See, e.g., Comments of GTE at p. 9; Comments of Capital Cities/ABC, Inc. ("Capital") at pp. 4-5. It would thus be highly inequitable to impose responsibility on a party legally incapable of exercising such responsibility.

12. Metropolitan agrees with Capital and others that secondary responsibility should be imposed on the non-owner licensee only in certain narrowly defined circumstances. Specifically, tenants on an antenna structure should only be held secondary responsible for the painting, lighting and maintenance of that structure under the following circumstances:

- (1) the FCC formally notifies the licensee that the structure owner is in default of its compliance responsibilities;
- (2) the licensee is given a reasonable opportunity of time after receipt of such notice to cure any deficiencies; and

- (3) the licensee has the legal ability to access the antenna structure and perform any duties required by the Commission.

These are the only circumstances under which a non-structure owner licensee should be held responsible for the painting, lighting and maintenance of that structure.

WHEREFORE, THE PREMISES CONSIDERED, the Metropolitan Water District of Southern California respectfully requests that the Federal Communications Commission take action in a manner consistent with the views expressed herein.

Respectfully submitted,

**METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

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Date: April 20, 1995

CERTIFICATE OF SERVICE

I, Lorraine E. Riddell, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing REPLY COMMENTS has been served this 20th day of April, 1995 by mailing U.S. First Class, postage prepaid, to the following:

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